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IN THE  
**SUPREME COURT OF THE UNITED STATES** U.S. Court

OCTOBER TERM—1962

**No. 630**

WILBERT RIDEAU,

Petitioner,

*versus*

STATE OF LOUISIANA,

Respondent.

**BRIEF FOR THE RESPONDENT.**

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**OPINIONS BELOW.**

The opinion of the Supreme Court of Louisiana is reported at 137 So. (2d) 283.

**JURISDICTION.**

The jurisdiction is correctly stated in the petition.

**STATEMENT OF FACTS.**

On February 16, 1961, petitioner, Wilbert Rideau, a young man nineteen years of age, entered the Gulf

National Bank of Lake Charles, Louisiana, at approximately 6:55 P. M. At pistol point, he forced three employees of the bank, Julia Ferguson, Dora McCain and Jay Hickman, to fill a suitcase with money. He forced them into Julia Ferguson's automobile and directed them at pistol point to an uninhabited area in northeast Lake Charles, Louisiana. He then ordered them out of the car, lined them up three abreast and fired six shots at them. Jay Hickman ran to his right and fell into a bayou; Dora McCain fell directly in front of Rideau on the west shoulder of the road, and Julia Ferguson fell near Dora McCain. When Julia Ferguson attempted to rise to her knees, petitioner Rideau stabbed her to death with his hunting knife. A few hours later Rideau was arrested and transported from Iowa, Louisiana, to Lake Charles, Louisiana. He freely and voluntarily confessed to the armed robbery, the kidnaping and the murder. On the following morning, a television station located in Lake Charles, Louisiana, televised interrogation of Rideau by Sheriff Reid of Lake Charles. Again, Rideau confessed his part in these crimes in the presence of the TV cameras. This twenty-minute news telecast was then broadcast three times over the Lake Charles television station. Rideau was subsequently indicted in a three-count indictment: count one, murder; count two, aggravated kidnaping, and count three, armed robbery. Rideau pleaded not guilty on the first two counts and entered a plea of guilty to armed robbery. The Court then appointed two qualified attorneys to represent Rideau. These attorneys

requested permission to withdraw the plea of guilty to armed robbery, which motion was granted. They then filed a motion to quash, and the state was ordered to elect under what count it wished to proceed. The state chose to proceed on the murder count, and the trial was accordingly set down.

Defense counsel then moved for a change of venue. The Court conducted a lengthy hearing, and, after hearing the testimony of twenty-nine witnesses and stipulating as to the testimony of five more, the Court determined that the defendant and your petitioner could get a fair trial in the Parish of Calcasieu and denied the motion for a change of venue. Thereupon a jury was empaneled, the trial held, and the defendant and your petitioner was found "guilty as charged." An appeal was taken to the Supreme Court of Louisiana, based upon thirty-four bills of exception to various rulings of the trial Court, all of which bills were thoroughly considered and passed upon by the Supreme Court of Louisiana. The lower Court's judgment and sentence were affirmed. A petition for rehearing was denied on February 19, 1962, and the petition for a writ of certiorari was filed in this Honorable Court on the 17th day of May, 1962. Certiorari was granted on December 3, 1962.

### **QUESTIONS PRESENTED.**

Petitioner raises four questions alleging violation of petitioner's rights under the United States Constitution, particularly the Fourteenth Amendment thereto. Question No. 1 questions the trial Court's failure to grant

a change of venue because of the telecast referred to in the Statement of Facts. Question No. 2 goes to the admissibility of several oral questions which admittedly were freely and voluntarily made prior to the appointment of counsel to represent defendant petitioner. Question No. 3 goes to the trial Court's failure to appoint counsel before the confessions were made and not until after a plea of guilty to armed robbery had been entered. Question No. 4 goes to the failure of the trial Court to sustain petitioner's challenge of three jurors who had seen the telecast and the failure of the trial Court to sustain challenge of petitioner to two jurors who held honorary commission as deputy sheriffs of Calcasieu Parish, Louisiana.

### ARGUMENT.

We do not believe that we can improve on the opinion of the Supreme Court of Louisiana passing upon the question of change of venue in this case. We quote from the decision as follows:

"In the case of *State v. Scott*, 237 La. 71, 110 So. (2d) 530, this Court (Supreme Court of Louisiana) stated the rule applicable to a change of venue: 'The burden of establishing that an applicant cannot obtain a fair trial in the parish where the crime was committed rests with him. The test is whether there can be secured with reasonable certainty from the citizens of the parish, a jury whose members will be able to try the case on the law and

evidence uninfluenced by what they may have heard of the matter and will give the accused full benefit of any reasonable doubt arising from the evidence or the lack of it. State v. Rini, 153 La. 57, 95 So. 400, and State v. Faciane, 233 La. 1028, 99 So. (2d) 333 and authorities there cited. The power to grant a change of venue rests in the sound discretion of the trial judge whose ruling will not be disturbed in the absence of the showing of clear abuse thereof."

In defendant's brief, it is intimated that the newscasts were intended and designed to prejudice the defendant. There is no basis for this assumption in the record.

The television newscasts have relevance only to the motion for a change of venue. There is no constitutional right to protection against publicity.

Whether or not there is a sufficient basis for a change of venue is a question of fact. This question has been resolved adversely to the defendant by the trial Court, who heard the witnesses, and the highest court of the state.

We would like to remind the Court that twenty-nine witnesses were heard on this point, twenty-four swore that the defendant petitioner could get a fair trial; only five were of the opinion that he could not get a fair trial.

Petitioner's brief points out to this Court that a large number of the people who live in Calcasieu Parish saw one or more of these telecasts.

It was also proven that there was tremendous newspaper coverage because this was an abhorrent crime, but where is the deprivation of petitioner defendant's constitutional right? He was not forced to go on television. He was not forced to confess. He was not coerced. He was not cajoled. He was not threatened. All that he needed to do was to refuse, and he would not have been on television. All that he had to do was to decline to confess and there would have been no confession. Even the learned counsel for petitioner defendant stated in their petition for writ of certiorari, on page 11, and we quote:

"We did not in the lower court nor do we now claim that petitioner received any physical mistreatment during the time he made his oral admissions and confessions. In fact, his inquisitors were ingratiating to this poorly educated indigent colored boy, unfamiliar with police methods and his right to remain close-mouthed and to have counsel if he desired."

In this connection, we must point out that this young man of nineteen years of age had better than an eighth grade education, a "B" average in school, and at the time of the commission of the crime was gainfully employed.

Respondent can see no violation of any constitutional right in the trial Court's denial of the change of venue request.

Question No. 2 in connection with the admission of the several oral confessions over the objection of petitioner respondent we respectfully point out that we agree with the Supreme Court of Louisiana in this matter, and we quote:

"In brief in this Court it is admitted by defendant that no physical force or duress was used in obtaining these admissions and confessions, but it is contended that he was not advised of his right to have counsel and that what he said would be used against him.

"Sheriff Reid testified that when the formal confession of February 16, 1961, was read to defendant he was advised that he did not have to make a statement and any statement so made could be used in court against him. At no time was he advised that he was entitled to have counsel nor asked if he wanted counsel. Deputy Barrios, the two FBI agents, the sheriff's secretary, and all parties present testified that no force or violence was used in obtaining the confessions.

"This Court said in *State v. Sheffield*, 232 La. 53, 93 So. (2d) 691:

"The objection to the admissibility of the confession on the ground that the statement itself does not show that all of the rights of the accused party were made known to him at the commencement of the taking of the statement, or that the accused was informed that at the time of giving the statement he was entitled to have a lawyer of his own choosing present, or that

the court would be required to appoint a lawyer to assist him in the defense of his case is without merit.

"An examination of the written confession shows that the accused party was fully informed of all of his rights. Further, the evidence taken on the hearing to determine whether or not the confession was admissible abundantly shows that the accused was informed by the district attorney that his statement would be used against him, both at the grand jury investigation of the matter and in court at the trial of the case if he was indicted, **notwithstanding that the accused is not entitled to be informed that a voluntary confession might or will be used against him.** State v. McGuire, 146 La. 49, 83 So. 374; State v. Burks, 196 La. 374, 199 So. 220; State v. Byrd, 214 La. 713, 38 So. (2d) 395; State v. Alleman, 218 La. 821, 51 So. (2d) 83."

"The fact that the defendant was handcuffed at the time he made certain admissions does not render the confession inadmissible. See State v. Joseph, 217 La. 175, 46 So. (2d) 118.

"The court correctly ruled that these bills are without merit." (Emphasis ours.)

Again, we can see no violation of petitioner defendant's constitutional rights.

We proceed to question No. 3, which goes to the appointment by the trial Court of counsel for defendant petitioner

Louisiana Revised Statutes 15:143 provides:

**"Assignment of counsel in felony cases—**

**"Whenever an accused charged with a felony shall make affidavit that he is unable to procure or employ counsel learned in the law, the Court before whom he shall be tried, or some Judge thereof, shall immediately assign to him such counsel; provided that if the accused is charged with a capital offense the Court shall assign counsel for his defense of at least five years actual experience at the Bar."**

In this connection, we would like to point out that ordinarily the trial Court in Louisiana does not know until the date of arraignment whether or not it is necessary to appoint counsel. The normal procedure is for a defendant to be called to the Bar, and, as in this case, the entire information or indictment is read to the defendant. At the conclusion of the reading, the clerk asks the defendant, "How do you plead?" And usually the defendant pleads, "Not guilty." Immediately, the clerk asks, "Who is your lawyer?" Frequently, the defendant will state the name of his lawyer, if he has one, and the defendant will then be requested to have his attorney put his name on the record. If the defendant states that he does not have a lawyer, the Court must determine whether or not he can afford a lawyer. If he cannot, the Court appoints competent counsel. If, however, for any reason, the Court feels that it would be to the best interest of the state and the defendant to have an attorney be appointed, it is within the Court's sound discretion so to do.

Therefore, when this particular defendant petitioner pleaded not guilty, which is mandatory in capital offenses, to the first two counts, and then pleaded guilty to armed robbery, which, as compared to the first two, is a mere felony, then and only then could the trial Court be in a position to know that it was necessary and advisable to appoint counsel. Appoint counsel the trial Court immediately did, and we might add the trial Court appointed outstanding counsel. The Court permitted them to withdraw the plea of guilty.

Question No. 4 goes to the refusal of the trial Court to sustain challenges of five jurors, three of whom had seen the telecast, but each of whom swore that they could and would decide the case solely on the evidence adduced from the witness stand and that they could and would give the defendant petitioner a fair and impartial trial.

The other two challenged jurors were challenged merely because they had been given honorary commissions as deputy sheriffs issued by the sheriff of Calcasieu Parish. These jurors testified that they had no connection with the sheriff's department, made no arrests, received no pay, and the commissions were used by them for convenience only. Again, we can find no violation of the constitutional rights of the defendant petitioner.

### CONCLUSION.

For these reasons, it is respectfully submitted that the decision of the Supreme Court of the State of Louisiana affirming the decision of the Fourteenth Judicial

District Court for the Parish of Calcasieu, State of Louisiana, be affirmed.

Respectfully submitted,

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Lake Charles, Louisiana.

**CERTIFICATE.**

I, Robert S. Link, Jr., member of the Bar of the Supreme Court, do hereby certify that a copy of the foregoing brief has been deposited in the United States mail, postage prepaid, addressed to James A. Leithead, Attorney at Law, P. O. Box 1209, Lake Charles, Louisiana, and Fred A. Sievert, Jr., Attorney at Law, P. O. Box 1209, Lake Charles, Louisiana.

**ROBERT S. LINK, JR.**

New Orleans, Louisiana.

This 4th day of March, 1963.